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DEC 29

In The

Supreme Court of the United States

October Term, 1972

Nos. 72-549 and 72-550

SCHOOL BOARD OF THE CITY OF RICHMOND, VIRGINIA, ET AL.,
Petitioners,

v.

STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.,
Respondents.

CAROLYN BRADLEY, ET AL.,
Petitioners,

v.

STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.,
Respondents.

REPLY TO PETITIONERS' SUPPLEMENTAL BRIEF IN SUPPORT OF PETITIONS FOR CERTIORARI

(See List Of Counsel—Inside Front Cover)

PHILIP B. KURLAND
Two First National Plaza
Chicago, Illinois 60670
Of Counsel

ANDREW P. MILLER
Attorney General of Virginia

WILLIAM G. BROADDUS
D. PATRICK LACY, JR.
Assistant Attorneys General

Supreme Court Building
Richmond, Virginia 23219

Counsel for The State Board of Education and The Superintendent of Public Instruction

FREDERICK T. GRAY
WALTER E. ROGERS
519 United Virginia Bank Bldg.
Richmond, Virginia 23219

OLIVER D. RUDY
Commonwealth's Attorney for Chesterfield County
Chesterfield, Virginia 23832

Counsel for The Board of Supervisors of Chesterfield County

J. SEGAR GRAVATT
105 East Elm Street
Blackstone, Virginia 23824
Counsel for The School Board of Chesterfield County

R. D. MCILWAINE
P.O. Box 705
Petersburg, Virginia 23803

L. PAUL BYRNE
Seventh and Franklin Building
Richmond, Virginia 23219

J. MERCER WHITE, JR.
County Attorney for Henrico County
P.O. Box 27032
Richmond, Virginia 23261

Counsel for The Board of Supervisors of Henrico County and The School Board of Henrico County

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There is no conflict between the decision of the Fourth Circuit in the instant case and that of the Sixth Circuit

in *Bradley* v. *Milliken*, (Nos. 72-1809—72-1814, 6th Cir., Dec. 8, 1972), reproduced in Petitioners' Supplemental Brief.

1. *The two cases present different issues.* The instant case is concerned with the imposition of consolidation to assure white student majorities in each school in three separate school systems, each of which systems has already attained unitary status in full compliance with the commands of the Fourteenth Amendment and the decisions of this Court. The *Milliken* case is concerned with the question of whether Detroit is operating a unitary, rather than a dual, school system. The resolution of the instant case by this Court would not control the result in *Milliken*, nor would a resolution of *Milliken* by this Court control the result here. There can be no conflict between the Courts of Appeals in these two cases because the cases do not present the same issues.

2. *The* Milliken *decision resolved no issue involving school districts other than Detroit except the requirement of an opportunity for hearing, which was not an issue in the instant case.* The only decision reached by the Sixth Circuit in *Milliken* as to such districts was that the communities outside Detroit must be given an opportunity for hearing if the judgment were to affect them. This due process issue was all that was resolved. As the Sixth Circuit Court of Appeals said: "While agreeing with the District Court in its conclusion that it can consider a metropolitan remedy, we express no views as to the desegregation area set forth in the orders of the District Court." *Bradley* v. *Milliken*, *supra* at 68. Indeed, unless the Court of Appeals for the Sixth Circuit was engaging in a charade, it could hardly have resolved any substantive issues until the parties

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o which it was awarding a hearing had been given an pportunity to be heard. The interlocutory judgment of he Court of Appeals in *Milliken* thus resolved no issues in onflict with the decision of the Court of Appeals for the ourth Circuit in this case.

3. The only conflict which exists is within the Sixth ircuit itself. The decision of the panel of the Sixth Cir- it in *Milliken* is in conflict wth the decision of another anel of the Sixth Circuit in *Mapp* v. *Board of Education*, U.S. L. Week 2207 (6th Cir., Oct. 11, 1972) (rehearing banc granted Nov. 28; reargued Dec. 14). The con- ct which exists between those opinions relates to the oblem of desegregation within a dual school system and t to any of the questions raised in the instant case. It ould be noted that, in order to resolve this conflict, peti- ns for rehearing en banc were filed in *Milliken* on Decem- r 22, 1972.

CONCLUSION

There is no conflict between the final decision of the urth Circuit in the instant case and the interlocutory deci- n of the Sixth Circuit in *Milliken*. The petitions for tiorari should be denied.

Respectfully submitted,

LIP B. KURLAND
wo First Natior ' Plaza
hicago, Illinois 60670
Of Counsel

REW P. MILLER
ttorney General of Virginia

J. SEGAR GRAVATT
105 East Elm Street
Blackstone, Virginia 23824
Counsel for The School Board of Chesterfield County

R. D. MCILWAINE
P.O. Box 705
Petersburg, Virginia 23803

WILLIAM G. BROADDUS
D. PATRICK LACY, JR.
Assistant Attorneys General

Supreme Court Building
Richmond, Virginia 23219

Counsel for The State Board of Education and The Superintendent of Public Instruction

FREDERICK T. GRAY
WALTER E. ROGERS
519 United Virginia Bank Bldg.
Richmond, Virginia 23219

OLIVER D. RUDY
Commonwealth's Attorney for Chesterfield County
Chesterfield, Virginia 23832

Counsel for The Board of Supervisors of Chesterfield County

L. PAUL BYRNE
Seventh and Franklin Building
Richmond, Virginia 23219

J. MERCER WHITE, JR.
County Attorney for Henrico County
P.O. Box 27032
Richmond, Virginia 23261

Counsel for The Board of Supervisors of Henrico County and The School Board of Henrico County

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CERTIFICATE

The undersigned, a member of the bar of this Court, hereby certifies that on the 28th day of December, 1972, he served three (3) copies of the foregoing Reply to Petitioners' Supplemental Brief in Support of Petitions for Certiorari upon all counsel for all parties required to be served by depositing same in the United States mail, first class postage, prepaid, addressed as follows:

JACK GREENBERG
JAMES M. NABRITT, III
NORMAN J. CHACHKIN
10 Columbus Circle
New York, New York 10019

LOUIS R. LUCAS
525 Commerce Title Building
Memphis, Tennessee 38103

WILLIAM L. TAYLOR
Catholic University Law School
Washington, D.C. 20013

JAMES R. OLPHIN
214 East Clay Street
Richmond, Virginia 23219

M. RALPH PAGE
420 North First Street
Richmond, Virginia 23219

ANTHONY G. AMSTERDAM
Stanford University Law School
Stanford, California 94305

GEORGE B. LITTLE
JAMES K. CLUVERIUS
Browder, Russell, Little
& Morris
1510 Ross Building
Richmond, Virginia 23219

CONARD B. MATTOX, JR.
City Attorney
1001 East Broad Street
Richmond, Virginia 23219

ANDREW P. MILLER
Of Counsel